

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

DONALD RUSSELL WARE, M.D.)

Physician's and Surgeon's)

Certificate No. A 26209)

Respondent)

Case No. 800-2014-008762

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 24, 2019.

IT IS SO ORDERED: April 24, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 CINDY M. LOPEZ
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4 State Bar No. 119988
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

14 **DONALD RUSSELL WARE, M.D.**
15 **3756 Santa Rosalia Drive #600**
Los Angeles, CA 90008

16 **Physician's and Surgeon's Certificate No. A**
17 **26209**

18 Respondent.

Case No. 800-2014-008762

OAH No. 2018050884

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Cindy M. Lopez,
26 Deputy Attorney General.

2. Respondent Donald Russell Ware, M.D. (Respondent) is represented in this proceeding by attorney Peter Osinoff at Bonne Bridges, whose address is 355 S. Grand Avenue Suite 1750, Los Angeles, California 90071.

3. On or about September 4, 1974, the Board issued Physician's and Surgeon's Certificate No. A 26209 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-008762, and will expire on November 30, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-008762 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 9, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-008762 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-008762. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2014-008762, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Medical Board of California.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
15 Board of California may communicate directly with the Board regarding this stipulation and
16 settlement, without notice to or participation by Respondent or his counsel. By signing the
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
21 action between the parties, and the Board shall not be disqualified from further action by having
22 considered this matter.

23 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
25 signatures thereto, shall have the same force and effect as the originals.

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 26209 issued
3 to Respondent DONALD RUSSELL WARE, M.D. is revoked. However, the revocation is
4 stayed and Respondent is placed on probation for three (3) years on the following terms and
5 conditions.

6 1. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO
7 RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled
8 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any
9 recommendation or approval which enables a patient or patient's primary caregiver to possess or
10 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health
11 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and
12 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;
13 and 4) the indications and diagnosis for which the controlled substances were furnished.

14 Respondent shall keep these records in a separate file or ledger, in chronological order. All
15 records and any inventories of controlled substances shall be available for immediate inspection
16 and copying on the premises by the Board or its designee at all times during business hours and
17 shall be retained for the entire term of probation.

18 2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
19 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
20 advance by the Board or its designee. Respondent shall provide the approved course provider
21 with any information and documents that the approved course provider may deem pertinent.
22 Respondent shall participate in and successfully complete the classroom component of the course
23 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
24 complete any other component of the course within one (1) year of enrollment. The prescribing
25 practices course shall be at Respondent's expense and shall be in addition to the Continuing
26 Medical Education (CME) requirements for renewal of licensure.

27 A prescribing practices course taken after the acts that gave rise to the charges in the
28 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

1 or its designee, be accepted towards the fulfillment of this condition if the course would have
2 been approved by the Board or its designee had the course been taken after the effective date of
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

7 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
8 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
9 advance by the Board or its designee. Respondent shall provide the approved course provider
10 with any information and documents that the approved course provider may deem pertinent.
11 Respondent shall participate in and successfully complete the classroom component of the course
12 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
13 complete any other component of the course within one (1) year of enrollment. The medical
14 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
15 Medical Education (CME) requirements for renewal of licensure.

16 A medical record keeping course taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the course would have
19 been approved by the Board or its designee had the course been taken after the effective date of
20 this Decision.

21 Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than 15 calendar days after successfully completing the course, or not later than
23 15 calendar days after the effective date of the Decision, whichever is later.

24 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
25 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
26 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
27 licenses are valid and in good standing, and who are preferably American Board of Medical
28 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal

1 relationship with Respondent, or other relationship that could reasonably be expected to
2 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
3 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
4 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

5 The Board or its designee shall provide the approved monitor with copies of the Decision
6 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the
7 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
8 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
9 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
10 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
11 signed statement for approval by the Board or its designee.

12 Within 60 calendar days of the effective date of this Decision, and continuing throughout
13 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
14 make all records available for immediate inspection and copying on the premises by the monitor
15 at all times during business hours and shall retain the records for the entire term of probation.

16 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
17 date of this Decision, Respondent shall receive a notification from the Board or its designee to
18 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
19 shall cease the practice of medicine until a monitor is approved to provide monitoring
20 responsibility.

21 The monitor(s) shall submit a quarterly written report to the Board or its designee which
22 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
23 are within the standards of practice of medicine, and whether Respondent is practicing medicine
24 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
25 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
26 preceding quarter.

27 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
28 such resignation or unavailability, submit to the Board or its designee, for prior approval, the

1 name and qualifications of a replacement monitor who will be assuming that responsibility within
2 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
3 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
4 notification from the Board or its designee to cease the practice of medicine within three (3)
5 calendar days after being so notified. Respondent shall cease the practice of medicine until a
6 replacement monitor is approved and assumes monitoring responsibility.

7 In lieu of a monitor, Respondent may participate in a professional enhancement program
8 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
9 review, semi-annual practice assessment, and semi-annual review of professional growth and
10 education. Respondent shall participate in the professional enhancement program at Respondent's
11 expense during the term of probation.

12 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
13 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
14 Chief Executive Officer at every hospital where privileges or membership are extended to
15 Respondent, at any other facility where Respondent engages in the practice of medicine,
16 including all physician and locum tenens registries or other similar agencies, and to the Chief
17 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
18 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
19 calendar days.

20 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

21 6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
22 NURSES.

23 For the first year of practice monitoring during probation, Respondent is prohibited from
24 supervising physician assistants and advanced practice nurses. After one year of monitoring,
25 Respondent may supervise a physician assistant or an advanced practice nurse.

26 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
27 governing the practice of medicine in California and remain in full compliance with any court
28 ordered criminal probation, payments, and other orders.

1 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation.

4 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
5 of the preceding quarter.

6 9. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

8 Respondent shall comply with the Board's probation unit.

9 Address Changes

10 Respondent shall, at all times, keep the Board informed of Respondent's business and
11 residence addresses, email address (if available), and telephone number. Changes of such
12 addresses shall be immediately communicated in writing to the Board or its designee. Under no
13 circumstances shall a post office box serve as an address of record, except as allowed by Business
14 and Professions Code section 2021(b).

15 Place of Practice

16 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
17 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
18 facility, or is a registered patient of a licensed home health agency.

19 License Renewal

20 Respondent shall maintain a current and renewed California physician's and surgeon's
21 license.

22 Travel or Residence Outside California

23 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
24 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
25 (30) calendar days.

26 In the event Respondent should leave the State of California to reside or to practice
27 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
28 departure and return.

1 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
2 available in person upon request for interviews either at Respondent's place of business or at the
3 probation unit office, with or without prior notice throughout the term of probation.

4 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board
5 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
6 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
7 defined as any period of time Respondent is not practicing medicine as defined in Business and
8 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
9 patient care, clinical activity or teaching, or other activity as approved by the Board. If
10 Respondent resides in California and is considered to be in non-practice, Respondent shall
11 comply with all terms and conditions of probation. All time spent in an intensive training
12 program which has been approved by the Board or its designee shall not be considered non-
13 practice and does not relieve Respondent from complying with all the terms and conditions of
14 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
15 on probation with the medical licensing authority of that state or jurisdiction shall not be
16 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
17 period of non-practice.

18 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
19 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
20 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
21 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
22 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

23 Respondent's period of non-practice while on probation shall not exceed two (2) years.

24 Periods of non-practice will not apply to the reduction of the probationary term.

25 Periods of non-practice for a Respondent residing outside of California will relieve
26 Respondent of the responsibility to comply with the probationary terms and conditions with the
27 exception of this condition and the following terms and conditions of probation: Obey All Laws;
28 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

1 Controlled Substances; and Biological Fluid Testing.

2 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
3 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
4 completion of probation. Upon successful completion of probation, Respondent's certificate shall
5 be fully restored.

6 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
7 of probation is a violation of probation. If Respondent violates probation in any respect, the
8 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
9 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
10 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
11 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
12 the matter is final.

13 14. LICENSE SURRENDER. Following the effective date of this Decision, if
14 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
15 the terms and conditions of probation, Respondent may request to surrender his or her license.
16 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
17 determining whether or not to grant the request, or to take any other action deemed appropriate
18 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
19 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
20 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
21 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
22 application shall be treated as a petition for reinstatement of a revoked certificate.

23 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
24 with probation monitoring each and every year of probation, as designated by the Board, which
25 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
26 California and delivered to the Board or its designee no later than January 31 of each calendar
27 year.

28

1
2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Peter Osinoff. I understand the stipulation and the effect it will
5 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
6 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
7 Decision and Order of the Medical Board of California.

8
9 DATED: 12-19-18

Donald Russell Ware W.
DONALD RUSSELL WARE, M.D.
Respondent

11 I have read and fully discussed with Respondent DONALD RUSSELL WARE, M.D. the
12 terms and conditions and other matters contained in the above Stipulated Settlement and
13 Disciplinary Order. I approve its form and content.

14 DATED: 12/20/18

[Signature]
Attorney for Respondent

16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Medical Board of California.

20
21 Dated: 3.9.19

Respectfully submitted,

22 XAMIER BECERRA
23 Attorney General of California
24 E. A. JONES III
25 Supervising Deputy Attorney General

Cindy M Lopez
CINDY M. LOPEZ
26 Deputy Attorney General
27 Attorneys for Complainant
28

Exhibit A

Accusation No. 800-2014-008762

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 CINDY M. LOPEZ
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2014-008762

13 Donald Russell Ware, M.D.
3756 Santa Rosalia Drive, Suite 600
Los Angeles, CA 90008

A C C U S A T I O N

14 Physician's and Surgeon's Certificate
No. A 26209,

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about September 4, 1974, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 26209 to Donald Russell Ware, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

1 “(g) The practice of medicine from this state into another state or country without meeting
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the
4 proposed registration program described in Section 2052.5.

5 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
6 participate in an interview by the board. This subdivision shall only apply to a certificate holder
7 who is the subject of an investigation by the board.”

8 6. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
9 adequate and accurate records relating to the provision of services to their patients constitutes
10 unprofessional conduct.”

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Gross Negligence)**

13 7. Respondent Donald Russell Ware, M.D. is subject to disciplinary action under section
14 2234, subdivision (b), in that he was grossly negligent in the care and treatment of two patients.
15 The circumstances are as follows:

16 Patient A.W.

17 A. A.W., a male patient, was first seen by Respondent in September 2014. He had
18 complaints of diabetes, pain, and peripheral neuropathy. He was taking Norco and Soma. There
19 was a brief medical history and physical exam but no exam of the lumbar spine or lower
20 extremities. There was no lab work.

21 B. A.W. saw Respondent on a monthly basis from November 2014 through November
22 2016.

23 C. Prescription records shows that Respondent prescribed Norco and Soma from January
24 2015 through the end of 2016.

25 Patient R.M.F.:

26 D. R.M.F is a female patient and starting seeing Respondent in 2013 although no chief
27 complaint is noted in the records. Opioids were prescribed but no reason was given. In
28 December 2013 she had a fall in the tub, and had pain in her lower back and right knee.

1 E. Valium was prescribed, but again, the records do not indicate why.

2 F. Prescription records show monthly prescriptions from November 2011 to November
3 2014 for hydrocodone and Soma, and Diazepam, starting in June 2014.

4 Extreme Departures:

5 G. With regards to patient A.W., Respondent prescribed controlled substances without a
6 medical purpose. (1) Initially, A.W. had complaints of low back pain and peripheral neuropathy
7 and had been provided Soma and Norco, but there was no evaluation of the lower back. (2) There
8 was no attempt to get imaging or to obtain consults. (3) There was no medical diagnosis which
9 would warrant the use of scheduled medications.

10 H. Respondent failed to adequately assess and monitor the use of controlled substances
11 for patient R.M.F. It appears her main reason for seeing Respondent was for knee pain, but
12 Respondent should not have prescribed Soma or Valium because they can be abused. No
13 rationale is provided for their use and there was no monitoring of the side effects.

14 I. The record keeping for patient R.M.F. was an extreme departure because it was
15 cursory, it did not provide examinations of body parts, and it did not discuss the response to
16 therapy with controlled substances.

17 SECOND CAUSE FOR DISCIPLINE

18 (Repeated Negligent Acts)

19 8. Respondent Donald Russell Ware, M.D. is subject to disciplinary action under section
20 2234, subdivision (c), in that in that he was negligent in the care and treatment of three patients.

21 The circumstances are as follows:

22 A. Complainant incorporates by reference the allegations contained in paragraphs 7.A.
23 through 7.I., regarding patients A.W. and R.M.F., as though fully set forth herein.

24 Patient M.M.:

25 B. M.M., a female patient, first starting seeing Respondent in 2009. The chief complaint
26 appears to be low back pain and left knee pain. She was prescribed Vicodin, Soma and Norvasc.
27 She stopped seeing Respondent for almost four years then started seeing him again in 2013. She
28 was prescribed Vicodin and Soma, and Valium was added.

1 C. Prescription records showed that from November 2011 through November 2014,
2 patient M.M. filled prescriptions on roughly a monthly basis for Vicodin, Soma, and Valium (the
3 Valium started in 2013.)

4 D. Respondent departed from the standard of care in that he failed to adequately assess
5 and monitor the need for and use of controlled substances with patient M.M.

6 Patient A.A.:

7 E. Patient A.A. is a female. She saw Respondent in November 2013 but the records do
8 not indicate her chief complaint.

9 F. CURES shows that from November 2011 to November 2014, there was a general
10 pattern of monthly hydrocodone, Soma and a benzodiazepine, usually Valium.

11 G. There was limited discussion of what the indications were for hydrocodone, Valium
12 and Soma. Generally, there were no exams involved and he failed to do a mental evaluation.
13 Respondent took no steps to make sure she was not addicted.

14 H. Respondent departed from the standard of care in that he failed to monitor and assess
15 the need for controlled substances.

16 Patient A.W.:

17 I. Respondent was negligent with regards to patient A.W. because he failed to adequately
18 assess and monitor the need for and use of controlled substances. Respondent did not get
19 informed consent or an opioid agreement, no consults were obtained, no CURES reports or urine
20 drug screens were obtained, and there was no discussion about the risks of using opioids.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Inadequate Record Keeping)**

23 9. Respondent Donald Russell Ware, M.D. is subject to disciplinary action under section
24 2266 for failing to maintain adequate and accurate records. The circumstances are as follows:

25 A. Complainant incorporates by reference the allegations contained in paragraph 7.A.
26 through 7.I., as though fully set forth herein.

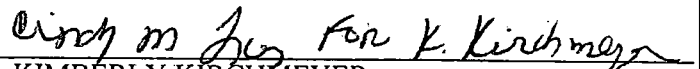
27 B. Respondent's notes on all three patients were cursory and did not contain any record
28 of examinations.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 26209, issued to Donald Russell Ware, M.D.;
2. Revoking, suspending or denying approval of Donald Russell Ware, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Donald Russell Ware, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 11.9.2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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